

**MINUTES OF THE
LEGISLATIVE MANAGEMENT COMMITTEE**
September 18, 2007 – 3:00 p.m. – W135 House Building

Members Present:

President John L. Valentine, Chair
Speaker Greg J. Curtis, Vice-Chair
Sen. Curtis S. Bramble
Sen. Gene Davis
Sen. Mike Dmitrich
Sen. Dan R. Eastman
Sen. Patricia W. Jones
Sen. Sheldon Killpack
Rep. David Litvack
Sen. Ed Mayne
Rep. Ralph Becker

Rep. David Clark
Rep. Brad King
Rep. Carol Spackman Moss
Rep. Gordon E. Snow

Members Absent:

Rep. Brad L. Dee

Staff Present:

Mr. Michael E. Christensen, Director
Ms. Gay Taylor, Associate General Counsel
Ms. Beverlee LeCheminant, Secretary

Note: A list of others present, a copy of related materials, and an audio recording of the meeting can be found at www.le.utah.gov.

1. Committee Business

President Valentine called the meeting to order at 3:14 p.m.

MOTION: Speaker Curtis moved to approve the minutes of the July 17, 2007 meeting. The motion passed unanimously. Sen. Bramble was absent for the vote.

2. Pharmaceutical Litigation Update

Ray Hinzte, Office of the Attorney General (Attorney General), introduced Mr. David Stallard from the Medicaid Fraud Unit in the AG's Office, who is before the committee to discuss a new litigation dealing with pharmaceutical pricing and average wholesale price matters.

Mr. Stallard indicated that they have identified the top 40 companies who have been overcharging Utah Medicaid over the past ten years resulting in approximately \$300 million in overcharges. He stated that the Attorney General will be filing their first suit later in the week against the top ten generic companies and will then follow up with the top ten brand companies. They will also file a third suit against about 20 other companies. In these 40 companies, they should aggregate about 90% of the overcharges to Medicaid. Mr. Stallard noted that 25 states have already filed actions against various manufacturers.

Mr. Stallard said Medicaid reimburses providers based on a reference price called AWP (average wholesale price) and evidence has been uncovered that many of the manufacturers have exploited the situation by artificially inflating list prices, with the end result being that Medicaid overpays for these drugs.

Speaker Curtis asked what damages the Attorney General will be seeking. Mr. Stallard estimates that about one-fourth of what the state has paid has been overcharged and in about the last ten years, the state has paid about \$1.3 billion, which translates to about \$300 million in overcharges.

Mr. Stallard said the Medicaid program is approximately 70% federal and 30% state, so any recovery they might receive in form of restitution to the program would be split 70/30. He also indicated there

could be a large component of civil penalties that the state keeps and does not have to share with the federal government. The Attorney General does not have authority to keep large penalties so it could possibly lapse over into the General Fund for the Legislature to appropriate.

Speaker Curtis asked Mr. Stallard if the federal government has to agree to the contingency legal fee. Mr. Stallard said they do not because under the Medicaid law, the states, by federal statute, have been assigned the authority to enforce the Medicaid laws. The Attorney General has not had any specific discussions with the federal government, but his understanding of the rules is that all the recovery will be considered net that has to be shared with the federal government.

President Valentine requested that the Attorney General find out if the federal government is going to participate in paying their proportionate share of the contingent attorneys' fees and send a letter to LMC.

3. Assignment of Animal Cruelty Bills to an Interim Committee

MOTION: Sen. Davis moved to assign S.B. 1001, Animal Torture Offense, and S.B. 1002, Animal Cruelty Amendments from the 2007 First Special Session to the Judiciary Interim Committee. The motion passed unanimously. Sen Bramble was absent for the vote.

4. Letters from Interim Committees and Appropriations Subcommittees

Mr. Michael Christensen reviewed letters from the following appropriations subcommittees:

- Joint Public Education Appropriations Subcommittee - requesting to hold its second interim subcommittee meeting on October 4, 2007;
- Transportation, Environmental Quality, and National Guard Joint Appropriations Subcommittee - requesting to hold a meeting on October 2, 2007; and
- Economic Development and Revenue Appropriations Subcommittee - requesting to hold two meetings tentatively set for September 20 and October 18.

MOTION: Rep. Snow moved to approve the three appropriations subcommittees' requests. The motion passed unanimously.

Mr. Christensen reviewed a request from the Judicial Retention Election Task Force to provide per diem for a working group of four legislators from the task force.

No action was taken on the letter from the Judicial Retention Election Task Force.

5. Other Business

6. Adjourn

MOTION: Sen. Davis moved to adjourn the meeting. The motion passed. Rep. King voted in the negative.

Speaker Curtis adjourned the meeting at 3:39 p.m.

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